

**In the Supreme Court of Nevada**

JARED AWERBACH, individually,  
Appellant/Cross-  
Respondent,

*vs.*

EMILIA GARCIA,  
Respondent/Cross-  
Appellant,

and

ANDREA AWERBACH, individually,  
Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONSE TO ORDER TO SHOW CAUSE**

In its order to show cause of February 8, 2018, the Court questions (1) whether Jared Awerbach's appeal from the August 18, 2017 judgment is moot because it was vacated by the August 21, 2017 order granting a new trial; and (2) whether Awerbach is aggrieved by the order granting a new trial, since it vacated a judgment that was adverse to him. The appeal from the judgment probably is moot; but the appealability of the August 21 order is more complicated.

Awerbach maintains the appeal from the order granting a new trial to be cautious. Parties are prudent to avail themselves of

appellate remedies as soon as the law affords, for fear of waiving issues by delay. *C.f.*, 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4478 (2d ed.2002) (discussing common law rule that “a question that could have been but was not raised on one appeal cannot be resurrected on a later appeal to the same court in the same case”). In this case, the law may provide Awerbach an appellate remedy now.

“An appeal may be taken from . . . an order granting or denying a motion for new trial.” NRAP 3A(b)(2). That is what we have here. The rule is silent as to whether that includes reversal a judgment that had been adverse to the appellant.

Awerbach is somewhat aggrieved, moreover. The order may appear to favor him. It vacated a judgment that was against him. And Awerbach also moved for a new trial himself, at the same time plaintiff-appellant Garcia did.<sup>1</sup> Yet, the district court granted the new trial based *only on the grounds raised by Garcia*. Thus, Awerbach faces a new trial at which the district court may apply the same, erroneous

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<sup>1</sup> Both Awerbach and plaintiff-respondent Garcia were dissatisfied by the jury’s verdict and, therefore, both moved for a new trial.

pretrial rulings that facilitated the August 18 judgment against him.

Awerbach would avoid that if possible.

Therefore, unless this Court determines that the broad and unlimited language of NRAP 3A(b)(2) does not apply to circumstances such as this, the appeal should go forward.

Dated this 26th day of March, 2018.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 26, 2018, I submitted the foregoing  
“Response to Order to Show Cause” for filing *via* the Court’s eFlex  
electronic filing system. Electronic notification will be sent to the  
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